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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

IN RE NATIONAL SECURITY AGENCY TELECOMMUNICATIONS RECORDS LITIGATION	)	**No. M:06-cv-01791-VRW**
This Document Relates Only To:	)	**MODIFIED** STIPULATION AND ~~PROPOSED~~ ORDER TO SET BRIEFING AND HEARING SCHEDULE IN CENTER FOR CONSTITUTIONAL RIGHTS V. BUSH, CASE NO. 07-cv-1115
Center for Constitutional Rights v. Bush, (Case No. 07-cv-1115)	)	Courtroom: 6, 17th Floor Judge: Hon. Vaughn R. Walker

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RECITALS

A. Whereas on May 24, 2007, the parties in *Center for Constitutional Rights v. Bush*, (Case No. 07-cv-1115) submitted a stipulation and proposed schedule for further briefing and a hearing on the parties' pending dispositive motions; *see* Docket No. 289 (MDL-1791) and Docket No. 2 (07-cv-1115); and

B. Whereas, pursuant to that stipulation, Defendants filed a supplemental memorandum in connection with the pending motions on June 8, 2007, *see* Docket Nos. 308-310 (MDL-1791) and Docket Nos. 3-8 (07-cv-1115); and

C. Whereas the Court has not yet entered the stipulation previously filed by the parties in *CCR*, and the parties now desire to modify the remaining briefing schedule slightly so that the date for Plaintiffs to file a supplemental memorandum would be extended by one week (from June 29, 2007 to July 6, 2007), as would the date for Defendants to file a reply (from July 20, 2007 to July 27, 2007); and

D. Whereas this modified stipulation would not alter the hearing date of August 9, 2007 that the parties previously proposed for the pending dispositive motions.

The parties therefore submit the following modified stipulation and proposed briefing schedule in this action:

1. *Center for Constitutional Rights v. Bush*, (Case No. 07-cv-1115), is one of the actions pending in this multi-district litigation proceeding, transferred by order of the Judicial Panel on Multi-district Litigation from the United States District Court for the Southern District of New York. This case has been brought against officers of the United States Government in their official capacities and challenges alleged intelligence activities of the National Security Agency. *See CCR* Complaint (Docket for 07-cv-1115, No. 1, Part 2).

2. The transfer of the *CCR* case to this Court was docketed on or about February 23, 2007. *See* Docket No. 1 (07-cv-1115). Prior to its transfer from the Southern District of New York, the parties in *CCR* had briefed respective dispositive motions. The Defendants in *CCR* had filed a motion to dismiss or, in the alternative, for summary judgment, based on an assertion of the state secrets privilege by the United States. *See* Dkt. No. 1 (07-cv-1115) at Parts 12-15.

The Plaintiffs in *CCR* had filed a motion for partial summary judgment. *See id.* at Parts 5-9. The United States District Court for the Southern District of New York held a hearing on these pending motions on September 5, 2006, but did not decide the motions prior to the transfer of this case to this Court.

3. No schedule has previously been set in this MDL proceeding for consideration of the pending dispositive motions in the *CCR* case and no prior Order of the Court required any action in the *CCR* case.[1] Thus, upon taking account of the schedule of proceedings in other MDL cases, the parties in *CCR* have negotiated this stipulation for any further briefing and a hearing on the motions pending in *CCR*.

4. The Plaintiffs and Defendants in *CCR* have reached agreement on and seek the Court's approval of a schedule for the filing of any supplemental briefs in *CCR* and a hearing on pending motions in that case. Under the proposed schedule: (i) Defendants in *CCR* filed a supplemental brief setting forth additional points and authority concerning the status and disposition of the *CCR* case on June 8, 2007; (ii) Plaintiffs in *CCR* would file a response to any submission by the Defendants and their own supplemental points and authority by July 6, 2007; and (iii) Defendants would file a reply brief by July 27, 2007.

4. The parties also propose that the Court hear the pending motions in CCR on August 9, 2007. The parties also request that the pending motions in CCR be heard separately from pending motions in other cases in this MDL proceeding that are scheduled on other dates.[2]

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[1] On February 20, 2007, the Court issued an order granting and denying in part a motion by the United States to stay all MDL proceedings pending resolution of an appeal in *Hepting v. AT&T*, Case No. 06-672. *See* Dkt. No. 172 (06-cv-1791). In that order, the Court directed the defendants in pending MDL cases to answer or otherwise respond to the complaint in cases as to which a stay was not agreed upon no later than March 29, 2007. Since the Defendants in the *CCR* case had already responded to the Complaint in that case with the pending dispositive motion, no schedule for further proceedings was set or required by the Court's February 20 Order.

[2] The parties conferred with the Court's clerk and determined that the August 9 hearing date was available. However, if that date becomes unavailable, the parties request an opportunity to confer with each other and the Court before another date is set (in part because counsel for the Government is unavailable the following week).

STIPULATION

The Plaintiffs and Defendants in the *CCR* action, through their undersigned counsel, hereby stipulate to the following schedule and request that the Court make this stipulation an order of the Court:

1. On June 8, 2007, Defendants in *CCR* filed a supplemental brief setting forth additional points and authority concerning the status and disposition of the *CCR* case (07-cv-1115).
2. On or before July 6, 2007, Plaintiffs in *CCR* will file a response to the Government's submission and their own supplemental points and authority in support of their position on the pending motions.
3. Defendants will file a reply brief by July 27, 2007.
4. On August 9, 2007, at 2 p.m., oral argument will be held on the pending motions in the *CCR* case (07-cv-1115).

DATED: June 26, 2007

Respectfully Submitted,

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By: */s Anthony J. Coppolino*
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Attorneys for Federal Defendants in their Official Capacities

DECLARATION PURSUANT TO GENERAL ORDER 45, § X.B

I, ANTHONY J. COPPOLINO, hereby declare pursuant to General Order 45, § X.B, that I have obtained the concurrence in the filing of this document from each of the other signatories listed below.

I declare under penalty of perjury that the foregoing declaration is true and correct.

Executed on June 26, 2007, in the City of Washington, District of Columbia.

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~~[PROPOSED]~~ ORDER

Pursuant to the foregoing stipulation, and good cause appearing, it is hereby ORDERED that:

1. On June 8, 2007, Defendants in *CCR* filed a supplemental brief setting forth any additional points and authority concerning the status and disposition of the *CCR* case (07-cv-1115).

2. On or before July 6, 2007, Plaintiffs in *CCR* will file a response to the Government's submission and their own supplemental points and authority in support of their position on the pending motions.

3. Defendants will file a reply brief by ~~July 27, 2007.~~ July 19, 2007

4. On August 9, 2007, at 2 p.m., oral argument will be held on the pending motions in the *CCR* case (07-cv-1115).

IT IS SO ORDERED.

Dated: June 28, 2007.

UNITED STATES DISTRICT COURT
IT IS SO ORDERED AS MODIFIED
Judge Vaughn R Walker
NORTHERN DISTRICT OF CALIFORNIA

Hon. Vaughn R. Walker
United States District Judge